

**REAL PARTY IN INTEREST****(37 C.F.R. §1.192(c)(1))**

5           The real party in interest is the Assignee of the patent application, Monster Cable Products, Inc., doing business at 455 Valley Drive, Brisbane, California 94005-1209.

**RELATED APPEALS AND INTERFERENCES****(37 C.F.R. §1.192(c)(2))**

10           On information and belief, no related appeals or interferences are pending.

**STATUS OF CLAIMS****(37 C.F.R. §1.192(c)(3))**

15           This continuation application (U.S. Pat. App. Ser. No. 09/735,697), claiming priority to U.S. Prov. Pat. App. Ser. No. 60/070,317 via U.S. Pat. App. Ser. No. 09/735,697, was filed with Claims 8-9, 11-12, 14-15, 17-18, 20, 23, and 26. A Preliminary Amendment, canceling Claims 8-9, 11-12, 14-15, 17-18, 20, 23, and 26 and adding Claims 29-40, was also therewith filed.  
20           Subsequently, the Examiner issued a final Office Action on August 28, 2001, maintaining her objection of Claims 37, 39, and 40, under 37 C.F.R. §1.75(c), and her rejection of Claims 29-40, under 35 U.S.C. §112, 35 U.S.C. §102(b) and 35 U.S.C. §103(a). A Response to the August 28, 2001, final Office Action was filed on October 5, 2001.

25           The Examiner then reopened prosecution and issued a second final Office Action on November 5, 2001, wherein the Examiner has withdrawn her grounds for objection of the claims on the basis of 37 C.F.R. §1.75(c), and has withdrawn her grounds for rejection of the claims on the bases of 35 U.S.C. §112 and 35 U.S.C. §102(b), while maintaining her rejection of Claims 29-40 under 35 U.S.C. §103(a). A Notice of Appeal was filed December 11, 2001, for Claims 29-40; and an Appeal Brief was filed February 8, 2002.

30           Subsequently, the Examiner reopened prosecution for a second time via a Telephonic Action on April 8, 2002. The Examiner issued a non-final Office Action on May 6, 2002, wherein Claims 29-40 were rejected. An In-Person Interview was conducted on May 22, 2002, by the Applicant's Attorney, Mr. F. David LaRiviere with Examiner Sharon Polk and her Supervisory Patent Examiner Brian Sircus, wherein Supervisory Patent Examiner Brian Sircus  
35           suggested that the Applicant amend the claims to positively recite "the relationship between color

and alpha [i.e., the peripheral device] can be changed" as shown in the Interview Summary of the same date. A Response was filed September 5, 2002, to the May 6, 2002, Office Action, wherein Claims 29-40 were canceled, without prejudice, and Claims 41-48 were added which positively recited "the relationship between color and alpha [i.e., the peripheral device] can be changed" as suggested by the Supervisory Patent Examiner.

The case was then referred the Sensitive Applications Division of the USPTO according the Supervisory Patent Examiner in a telephone conference of December 29, 2002. The case was referred back the Examiner which has now issued a final Office Action on January 16, 2003. Claims 41-48 are herein amended to better encompass the present invention.

#### STATUS OF AMENDMENTS (37 C.F.R. §1.192(c)(4))

An Amendment After Final Rejection is herein submitted. The Applicant believes that herein amended Claims 41-48 fully encompass all of the inventive system features as set forth in the Specification and are allowable. The Amendment is summarized as follows.

Independent Claim 41 is herein amended only to provide clearer antecedent basis by deleting [, said plurality of electrical outlets, and said plurality of peripheral devices, each] before "having a plurality of color-assignable areas," and by inserting and correspondingly before "reassigning one or more of said plurality of color-assignable areas to a corresponding number of different ones of said plurality of peripheral devices." Dependent Claim 42 is herein amended only to provide clearer antecedent basis by inserting plurality of attachable before "color-coded labels further include indicia for identifying which of said plurality of peripheral devices has been assigned a new color."

Independent Claim 43 is herein amended only to provide clearer antecedent basis by deleting [, said plurality of electrical outlets, and said plurality of peripheral devices, each] before "having a plurality of color-assignable areas," by inserting each outlet of said plurality of electrical outlets having a corresponding color-assignable area, and, and by inserting and correspondingly before "reassigning one or more of said plurality of color-assignable areas to a corresponding number of different ones of said plurality of peripheral devices." Dependent Claim 42 is herein amended only to provide clearer antecedent basis by inserting plurality of attachable before "color-coded labels further include indicia for identifying which of said plurality of peripheral devices has been assigned a new color."

Independent Claim 45 is herein amended only to provide clearer antecedent basis by

deleting [, said plurality of electrical outlets, and said plurality of peripheral devices, each] before  
"having a plurality of color-assignable areas," by inserting each outlet of said plurality of  
electrical outlets having a corresponding color-assignable area, each device of said plurality of  
peripheral devices having a corresponding color-assignable area, and, and by inserting and  
5 correspondingly before "reassigning one or more of said plurality of color-assignable areas to a  
corresponding number of different ones of said plurality of peripheral devices." Dependent  
Claim 46 is herein amended only to provide clearer antecedent basis by inserting plurality of  
attachable before "color-coded labels further include indicia for identifying which of said  
plurality of peripheral devices has been assigned a new color."

10 Independent Claim 47 is herein amended only to provide clearer antecedent basis by  
deleting [, said plurality of electrical outlets, and said plurality of peripheral devices, each] before  
"having a plurality of color-assignable areas," by inserting each outlet of said plurality of  
electrical outlets having a corresponding color-assignable area, each device of said plurality of  
peripheral devices having a corresponding color-assignable area, and, and by inserting and  
15 correspondingly before "reassigning one or more of said plurality of color-assignable areas to a  
corresponding number of different ones of said plurality of peripheral devices." Dependent  
Claim 48 is herein amended only to provide clearer antecedent basis by inserting plurality of  
attachable before "color-coded labels further include indicia for identifying which of said  
plurality of peripheral devices has been assigned a new color."

## SUMMARY OF INVENTION

(37 C.F.R. §1.192(c)(5))

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25 With the many possible combinations/permutations of electronic components (e.g., TV,  
VCR, DVD, etc.) available today, the consumer usually finds himself "tangled in a web of  
confusion" with respect to handling/managing all the cords emanating from the prior art plain  
plug strip. Such is the problem with these prior art "plain" plug strips, which provide no  
identifying information at all, where the average consumer needed *superior memory* to recall the  
electrical connections which were made long ago or *superior vision* to see those connections  
30 from any notable distance made between the plug strip and the equipment being plugged.  
Further, prior art means for tagging of electronic equipment were easily worn or dislodged. See  
Appendix B, for an illustration of the prior art plug strip problems. Solving these prior art  
problems, the claimed invention is basically a solid color-coded plug strip system for

distributing power to many pieces of electronic equipment, such as one would require in a home computer system (e.g., computer, printer, scanner, modem, etc.), a home theater system (e.g., TV, VCR, DVD, etc.), a home sound system CD, receiver, LP turntable, cassette player, P/A systems, electronic musical instruments, etc.), and a home security system (e.g., alarm system, surveillance equipment such as closed circuit television, CCTV, infrared sensor such as IR camera, motion detector, electronic gate motor, intercom, etc.). The presently claimed color coding, as applied to this plug strip, takes into consideration the human factors engineering principles and practical problems involved in setting-up and maintaining any of the foregoing electronic home systems for the typical consumer who may not have a background in electrical engineering. The solid colors on the plug strip system allow the consumer to easily see the connection, even from a distance without having to remember, squint, or predict that connection. See Appendix B, for an illustration of the present solid color-coded plug strip system solution to the prior art problems.

The present solid color-coded plug strip system comprises a plurality of solid color-coded outlet housing portions (i.e., solid color disposed on and surrounding each outlet). The outlet areas of a prior art plain plug strip may be retrofitted by indicia elements of the present invention kit. In addition, the solid color-coded outlet housing portions of the present invention plug strip system may also have their colors changed to suit the consumer by likewise retrofitting the strip system with the indicia elements from the kit. The present solid color-coding on the plug strip system is substantially more prominent to the human eye than the cited art colored stripes. A goal of the present invention is to *not* hardwire. Thus, the present invention provides nearly unlimited flexibility by allowing the consumer to customize his electronic "hook-ups" without "hang-ups." Since the color-coding is applied to a plug strip system rather than to a specialized electronic apparatus (e.g., a resistor), the user may connect any peripheral device to any outlet with any interconnecting cord that he/she so chooses. The present invention allows the consumer to define the color-coding via the retrofitting option, because the interconnects and the indicia elements (stickers) are not "hardwired."

An optional easy-to-use kit may be provided with this solid color-coded plug strip system, the kit comprising a plurality of solid color-coded indicia element sets for retrofitting said housing member of said power strip apparatus to a number of different ones of said plurality of peripheral devices by *correspondingly* labeling said solid-colored

outlet housing portions, said plurality of electrical power cords, and said plurality of peripheral devices, thereby facilitating retrofitting of a prior art plain plug strip or retrofitting the colors of the claimed solid color-coded plug strip system to suit the consumer's changing needs. The indicia element sets may also include solid color-coded stickers for adhering to plain prior art cords and to the electronic component (i.e., the peripheral device). The solid color-coded indicia elements may have information (e.g., symbols, numbers, words, or acronyms) printed thereon about many types of consumer electronic equipment, enabling the consumer to easily further identify his electronic connection and the particular electronic component.

The present invention, as defined in the claims, is illustrated in Figures 2 and 3 of the Drawings and is described in the Detailed Description of the Invention beginning on page 6, line 27 of the present continuation application. In one embodiment of the invention, the AC power distribution apparatus comprises: a solid color-coded power strip apparatus 20N; a plurality of color-coded power cords 35, 45, 55, (2) 45x, and 55x; and a plurality of color-coded indicia elements  $I_{cx}$ . The power strip apparatus also comprises a housing with a plurality of AC outlet portions C1, C2, C3, C4, C5, ..., CX corresponding to outlet receptacles 23(a, b, c, d, e, ..., n) for providing AC power to the same plurality of peripheral electrical devices. Each AC outlet housing portion being colored with a first color that is different from another AC outlet housing portion. The plurality of power cords comprise a power cord colored to match said first color. The remaining power cords of the plurality of power cords, comprise power cords colored to match each of the other colors on the power strip 20N. The indicia elements are, by example, an adhesive-backing type label having a color that matches the color of the power cord and the corresponding color of the AC outlet housing portion. The indicia elements  $I_{cx}$  also comprise identifying information (e.g., words, acronyms, numerals, and symbols) about the peripheral device to be powered.

In the preferred embodiment of the present invention, the kit comprises a plurality of indicia element sets for correspondingly labeling a respective outlet housing portion CX, power cords or their terminals, and the peripheral device to which AC power is desired to be distributed as well as stickers for retrofitting the portions CX. The kit is also then useful in retrofitting an after-market AC power strip product, as alluded supra.

**ISSUES****(37 C.F.R. §1.192(c)(6))**

- 5 I. Whether Claims 41-48 contain subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the art that the inventor(s), at the time the application was filed, had possession of the claimed invention, under 35 U.S.C. §112, first paragraph.
- 10 II. Whether Claims 41-48 are indefinite for failing to particularly point-out and distinctly claim the subject matter which the applicant regards as the invention, under 35 U.S.C. §112, second paragraph.
- III. Whether Claims 42-48 are substantial duplicates of Claim 41, under 37 C.F.R. §1.75.
- 15 IV. Whether Claims 41-48 are unpatentable over Lee (US 5,589,718).

**GROUPING OF CLAIMS****(37 C.F.R. §1.192(c)(7))**

- 20 The claims do not stand nor fall together.

**ARGUMENT****(37 C.F.R. §1.192(c)(8))**

25 **INTRODUCTORY REMARKS**

The Applicant wishes to thank the Examiner for withdrawing the previous grounds of rejection and objection and for distilling the issues in the January 16, 2003, final Office Action. In this Response to the final Office Action, Claims 41-48 are herein amended to better encompass the full scope and breadth of the present invention, as discussed, supra,

30 notwithstanding the Applicant's belief that the claims would have been allowable as originally

filed. Herein amended Claims 41-48 are believed to be fully supported by the specification, and are believed to be in allowable form. Alternatively, the claims are believed to be placed in better condition for Reinstatement of the December 11, 2001, Appeal. Thus, favorable consideration of the present continuation application is respectfully requested in light of the foregoing amendment after final rejection, these remarks, the following argument, the appendices, and the herewith submitted exhibits.

**I. Whether Claims 41-48 contain subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the art that the inventor(s), at the time the application was filed, had possession of the claimed invention, under 35 U.S.C. §112, first paragraph.**

**A. Specific nature of the Examiner's rejection**

The Examiner has rejected Claims 41-48, under 35 U.S.C. §112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the art that the inventor(s), at the time the application was filed, had possession of the claimed invention, stating:

[The Applicant] contend[s] in [the] remarks portion of the paper #13, page 5, that the claimed subject matter of new claims 41-48 is fully supported by the originally filed [December 12, 2000,] specification (p. 3, ll. 18-26; p. 4, ll. 18-21; p. 5, l. 21 - p. 7, l. 7) ....

The examiner disagrees in part. The examiner cannot find support in either the original specification or the present continuation application regarding the housing member, the electrical outlets, and the plurality of peripherals each[,] having a plurality of color-assignable areas. Further, the assertion that "reassigning one or more [of] the plurality of color-assignable areas" was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor, at the time the application was filed, had possession of the claimed invention. Similarly, the *assigning a new color* to the plurality of peripheral devices is not reasonably supported in the specification.

As such, the Examiner concedes that at least some support exists in the originally filed Specification for the foregoing limitations at issue. Herein amended Claims 41-48 now provide clearer antecedent basis, as discussed, supra, thereby rendering moot the Examiner's ground for rejection on this basis. *Alternatively, the Applicant respectfully submits that the foregoing rejection of Claims 41-48, under 35 U.S.C. §112, first paragraph, with respect to the issue*

*of the "each" language constitutes a new ground of rejection and hereby requests that the finality of the outstanding Office Action be withdrawn.*

**B. Analysis in light of the evidence.**

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Notwithstanding Claims 41-48 being herein amended to more fully encompass the present invention, the Applicant hereby respectfully traverses the Examiner's grounds for rejection on this basis. Herein amended Claims 41-48 now respectively provide sufficient antecedent basis and recite language consistent with the originally-filed Specification:

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41. (Amended) A solid color-coded AC electrical power distribution system, said system comprising:

a housing member having a plurality of electrical outlets for connecting electrical power to a plurality of peripheral devices,  
said housing member having a plurality of color-assignable areas,  
each area of said color-assignable areas on said housing member having a corresponding plurality of color-coded indicia for identifying and for associating each outlet with one of said plurality of peripheral devices;  
and

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a plurality of attachable color-coded labels for selectively and correspondingly reassigning one or more of said plurality of color-assignable areas to a corresponding number of different ones of said plurality of peripheral devices.

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42. (Amended) A system, as recited in Claim 41, wherein said plurality of attachable color-coded labels further include indicia for identifying which of said plurality of peripheral devices has been assigned a new color.

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43. (Amended) A solid color-coded AC electrical power distribution system, said system comprising:

a housing member having a plurality of electrical outlets for connecting electrical power to a plurality of peripheral devices,  
said housing member having a plurality of color-assignable areas,  
each outlet of said plurality of electrical outlets having a corresponding color-assignable area, and

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each area of said color-assignable areas on said housing member having a corresponding plurality of color-coded indicia for identifying and for associating each outlet with one of said plurality of peripheral devices;  
and

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a plurality of attachable color-coded labels for selectively and correspondingly reassigning one or more of said plurality of color-assignable areas on said housing member to a corresponding number of different ones of said plurality of peripheral devices.

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44. (Amended) A system, as recited in Claim 43, wherein said plurality of attachable color-coded labels further include indicia for identifying which of said plurality of peripheral devices has been assigned a new color.



- 50 45. (Amended) A solid color-coded AC electrical power distribution system, said system comprising:  
a housing member having a plurality of electrical outlets for connecting electrical power to a plurality of peripheral devices,  
said housing member having a plurality of color-assignable areas,  
55 each outlet of said plurality of electrical outlets having a corresponding color-assignable area,  
each device of said plurality of peripheral devices having a corresponding color-assignable area, and  
each area of said color-assignable areas on said housing member having a corresponding plurality of color-coded indicia for identifying and for  
60 associating each outlet with one of said plurality of peripheral devices;  
and  
a plurality of attachable color-coded labels for selectively and correspondingly reassigning one or more of said color-assignable areas on one or more of said  
65 plurality of electrical outlets to a corresponding number of different ones of said plurality of peripheral devices.
- 70 46. (Amended) A system, as recited in Claim 45, wherein said plurality of attachable color-coded labels further include indicia for identifying which of said plurality of peripheral devices has been assigned a new color.
- 75 47. (Amended) A solid color-coded AC electrical power distribution system, said system comprising:  
a housing member having a plurality of electrical outlets for connecting electrical power to a plurality of peripheral devices,  
said housing member having color-assignable areas,  
each outlet of said plurality of electrical outlets having a corresponding color-assignable area,  
80 each device of said plurality of peripheral devices having a corresponding color-assignable area, and  
each area of said color-assignable areas on said housing member having a corresponding plurality of color-coded indicia for identifying and for associating each outlet with one of said plurality of peripheral devices;  
and  
85 a plurality of attachable color-coded labels for selectively and correspondingly reassigning one or more of said color-assignable areas on one or more of said plurality of peripheral devices to a corresponding number of different ones of said plurality of electrical outlets.
48. (Amended) A system, as recited in Claim 47, wherein said plurality of attachable color-coded labels further include indicia for identifying which of said plurality of peripheral devices has been assigned a new color.

The Applicant respectfully submits that herein amended Claims 41-48 are fully supported by the originally-filed Specification (p. 3, ll. 10-26):

The foregoing objects are accomplished by providing in one embodiment of the invention, an AC power distribution apparatus comprising a power strip apparatus, a plurality of power cords and a plurality of indicia elements. The power strip apparatus comprises a housing with a plurality of AC outlet portions for providing AC power to the same plurality of peripheral electrical devices. *Each AC outlet housing portion being colored with a first color that is different from another AC outlet housing portion.* The plurality of power cords comprise a

*power cord colored to match said first color. The remaining power cords of the plurality of power cords, comprise power cords colored to match each of the other colors on the power strip. The indicia elements are, by example, an adhesive-backing type label having a color that matches the color of the power cord and the corresponding color of the AC outlet housing portion. The indicia elements also comprise identifying information about the peripheral device to be powered.*

*Another embodiment of the present invention comprises a kit of a plurality of indicia element sets for labeling a respective power strip AC outlet portion, power cord terminals and the peripheral device to which AC power is desired to be distributed. The kit is useful in retro-fitting after-market ac power strip product. [Emphasis added.]*

In addition, the originally-filed Specification (p. 6, ll. 15-24) also teaches:

Fig. 3 shows power strip 20N in accordance with the present invention having color coded AC outlet portions C1, C2, C3, C4, C5 and Cx permanently provided at time of manufacturing with the colored portions, or after market, by applying an appropriate *colored labels or indicia* Ic1, Ic2, Ic3, Ic4, Ic5 and Icx to the outlet portions of an AC power strip not provided with permanent color coded portions, in accordance with the present invention. The colored portions C1, C2, C3, C4, C5 and Cx and the colored labels or indicia Ic1, Ic2, Ic3, Ic4, Ic5 and Icx, attachable to the outlet portions of the AC power strip 20N, may include the identifying information of the particular peripheral device to be powered. By example, indicia with the appropriate peripheral device 30, 40, 50, 60, or 70 identity may be imprinted on the indicia [element]. [Emphasis added.]

#### **C. Conclusion with respect to Issue I**

Thus, the Applicant respectfully submits that herein amended Claims 41-48 contain subject matter which is described in the specification in such a way as to reasonably convey to one skilled in the art that the inventor, at the time the application was filed, had possession of the claimed invention, under 35 U.S.C. §112, first paragraph. Therefore, the Applicant respectfully requests that the Examiner's grounds for rejection on this basis be withdrawn.

#### **II. Whether Claims 41-48 are indefinite for failing to particularly point-out and distinctly claim the subject matter which the applicant regards as the invention, under 35 U.S.C. §112, second paragraph.**

##### **A. Specific nature of the Examiner's rejection**

The Examiner has rejected Claims 41-48, under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point-out and distinctly claim the subject matter which the applicant regards as the invention, stating:

... claims 41, 43, 45, and 47, it is unclear how the housing member, which has a plurality of outlets, the outlets themselves, and the plurality of peripherals EACH have a plurality of color-assignable areas.

... claims 41, 43, 45, and 47, it is unclear how a solid color-coded AC electrical power distribution system can later be claimed to have "color-assignable areas" when it is not previously recited that it is color-coded. ....

... claim 41, ... recites a plurality of attachable color-coded labels for selectively reassigning one or more of said plurality of color-assignable areas to a corresponding number of different ones of said plurality of peripheral devices[s]. ... unclear how one of the color-assignable areas can be selectively reassigned to a corresponding number of different ones of said plurality of peripheral devices without the other two areas also being reassigned.

... claims 42, 44, 46, and 48, it is unclear how the label discern which of the plurality of devices has been assigned a new color. If the device is originally manufactured with a red colored indicia for DVD/LD then do the plurality of color-coded labels (Bright orange, Light Mocha, Chartreuse, Bright Blue, Kelley Green, or Bright Purple) have DVD/LD indicia such that the user can truly decide which of said plurality of peripheral devices has been assigned a new color, or are they limited to a few selections (i.e., 2 other colored labels would have DVD/LD printed on them)?

Reiterating, the Examiner concedes that at least some support exists in the originally filed Specification for the foregoing limitations at issue.

#### **B. Analysis in light of the evidence.**

Notwithstanding Claims 41-48 being herein amended, as discussed, supra, to more fully encompass the present invention, the Applicant hereby respectfully traverses the Examiner's grounds for rejection on this basis. In response to the Examiner's statement that the claims are unclear with respect to how one of the color-assignable areas can be selectively reassigned to a corresponding number of different, independent Claims 41, 43, 45, and 47 are herein amended to provide sufficient antecedent basis to show how the color-assignable areas are allocated and reassignable. In retrofitting the plug strip apparatus, the user would clearly need to be consistent in his/her selective attachment of the labels by correspondingly labeling the elements.

#### **C. Conclusion with respect to Issue II**

Thus, the Applicant respectfully submits that herein amended Claims 41-48 are not indefinite for failing to particularly point-out and distinctly claim the subject matter which the applicant regards as the invention, under 35 U.S.C. §112, second paragraph. Therefore, the Applicant respectfully requests that the Examiner's grounds for rejection on this basis be withdrawn.

**III. Whether Claims 42-48 are substantial duplicates of Claim 41, under 37 C.F.R. §1.75.**

**A. Specific nature of the Examiner's rejection**

The Examiner has rejected Claims 42-48, under 37 C.F.R. §1.75, as being substantial duplicates of Claim 41, stating:

When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP §706.03(k).

**B. Analysis in light of the evidence**

Notwithstanding Claims 41-48 being herein amended, as discussed, supra, to more fully encompass the present invention, the Applicant hereby respectfully traverses the Examiner's grounds for rejection on this basis. The Examiner concedes that "... it is proper after *allowing one claim* to object to the other as being a substantial duplicate of the *allowed claim*" [emphasis added]. As such, the requirements for this basis of objection have not been met as the Examiner has not yet allowed any of the claims.

**C. Conclusion with respect to Issue III**

Thus, the Applicant respectfully submits that the ground for objection of Claims 42-48 on this basis is improper, because no claim could be a substantial duplicate of *any* allowed claim since *no claim has yet been allowed nor even yet found to be allowable* by the Examiner. Therefore, the Applicant respectfully requests that the Examiner's grounds for objection on this basis be withdrawn.

IV. Whether Claims 41-48 are unpatentable over Lee (US 5,589,718) under 35 U.S.C. §103(a).

A. Specific nature of the Examiner's rejection

The Examiner has rejected Claims 41-48, under 35 U.S.C. §103(a), as being unpatentable over Lee (US 5,589,718), stating:

... claims 41, 43, 45, and 47, Lee teaches a solid color-coded electrical power distribution system (col. 4, ll. 38-41), said system comprising:  
a housing member (12) having a plurality of electrical outlets (Fig.[] 16a-16b) for connectible electrical power to a plurality of electrical outlets, and said plurality of peripheral devices, each having a plurality of color-assignable areas, each area of said color-assignable areas on said housing member having a corresponding plurality of color-coded indicia for identifying and for associating each outlet with one of said plurality of peripheral devices (col. 3, ll. 43-50)[,]....

B. Analysis in light of the evidence

Notwithstanding Claims 41-48 being herein amended, as discussed, supra, to better encompass the present invention, the Applicant respectfully traverses the Examiner's grounds for rejection on this basis for the reasons set forth, infra.

1. Evidence of secondary considerations, under 37 C.F.R. §1.132, from the Declaration of the Applicant Noel Lee

The Applicant respectfully asserts that the Declaration of the Applicant Noel Lee, under 37 C.F.R. §1.132, provides sufficient evidence of the nexus between commercial success and the merits of the present invention. The general rule for sufficiency of evidence with respect to commercial success is stated in *Winner International Royalty Corp., Inc. v. Wang*, No. 96-2107, 48 USPQ2d 1139 (D.C.D.C. June 12, 1998), decided 10 years after and being consistent with *Demaco*: "Plaintiff's evidence is sufficient to establish commercial success of invention ..., since evidence shows that plaintiff has sold more than 1.5 million devices, worth more than \$60 million in sales, since this economic data supports plaintiff's position that its device is able to command significantly higher retail price ... to meet peculiar needs of

certain consumers, ... is clearly consistent with the fact of commercial success."

In the present case, the Applicant Noel Lee's Declaration (para. 7), under 37 C.F.R. §1.132, states, "A need for a solid color-coded central power source has been long felt in the electronic components industry. Although stymied by the peripheral device connection confusion imparted by plain plug strips, the industry had made no progress toward my solution to the problem. No other manufacturer has been known to have made a solid color-coded central power supply having peripheral device identification prior to my invention. Further, the present invention is currently experiencing record sales and has dominated the market sector in the area of plug strips both domestically and in Asia. In addition, two large retailers, Good Guys<sup>TM</sup> and Sound Advice<sup>TM</sup> have completely discontinued sales of the competitor's plug strip (Panamax<sup>TM</sup>) and are exclusively carrying only the present invention central power supply (See Exhibit B [of record] containing Monster Cable Products, Inc.'s sales figures; also see herewith submitted Declaration under Rule 132 of Karen Johnson for Good Guys, Inc.)." Specifically, Exhibit B of his Declaration (of record) demonstrates 458,010 units sold worth \$8,857,605.13 in retail sales to the date of November 13, 2000. The Examiner even concedes (second final Office Action, para. 4) that the Declaration of Noel Lee "may be persuasive regarding commercial success and long felt need." Thus, under *Winner*, Noel Lee's Declaration provides sufficient evidence of the nexus between the merits of the invention and commercial success. Therefore, the Applicant respectfully requests reconsideration of the Applicant Noel Lee's Declarations.

**2. Evidence of secondary considerations, under 37 C.F.R. §1.132, from the Declaration of the Retailer Karen Johnson under 37 C.F.R. §1.132**

The Applicant respectfully asserts that the Declaration of the Retailer Karen Johnson *likewise provides sufficient evidence of the nexus between commercial success and the merits of the present invention.* As discussed supra, the general rule of *Winner* is also applicable here: "Plaintiff's evidence is sufficient to establish commercial success of invention ..., since evidence shows that plaintiff has sold more than 1.5 million devices, worth more than \$60 million in sales, since this economic data supports plaintiff's position that its device is able

to command significantly higher retail price ... to meet peculiar needs of certain consumers, ... is clearly consistent with the fact of commercial success."

Here, Ms. Karen Johnson's Declaration (para. 3) states, "A need for a solid color-coded central power source has been long felt in the electronic components retail industry. Although retail consumers have been stymied by the peripheral device connection confusion imparted by plain plug strips, the manufacturing industry had made no progress toward the Monster solution as no other manufacturer was known to have made a solid color-coded central power supply having peripheral device identification prior to the present invention. Further, the Monster product is currently experiencing record sales through our retail chain and has dominated the market sector in the area of plug strips. In addition, we have completely discontinued sales of the competitor's plug strip (Panamax™) and are exclusively carrying only the Monster color-coded central power supply (See Exhibit A [of record] containing out retail sales figures and market share data)." Specifically, Exhibit A of her Declaration (of record) shows 31,657 units sold worth \$1,487,796.83 in retail sales to the date of November 13, 2000. The Examiner even concedes (second final Office Action, para. 4) that the Declaration of the Retailer Karen Johnson "may be persuasive regarding commercial success and long felt need." Thus, under *Winner*, the Retailer Karen Johnson's Declaration also provides sufficient evidence of the nexus between the merits of the invention and commercial success. Therefore, the Applicant respectfully requests reconsideration of the Retailer Karen Johnson's Declaration.

3. Evidence of patentably distinct combination of features and their unexpectedly superior advantages in the present invention, under 37 C.F.R. §1.132, from the Declaration of the Expert Witness Environmental/Social Psychologist Dr. Albert Mehrabian

With respect to the expert witness findings, what is *at issue* here for patentability is *not* whether there is "substantial advantage in using solid colors of high chroma," but whether "using solid colors of high chroma" in combination with a plug strip power distribution system and a retrofitting kit is obvious. The expert witness has made findings as to the unexpected results of the present invention *combination of elements*, rather than a statement regarding his knowledge of *solid colors of high chroma* in general. After examining, discussing,

and distinguishing the cited art references (e.g., the '718 Patent) as well as a prototype of the present invention, Dr. Mehrabian concluded: "Thus, the present invention, ... comprising a solid color-coded device [plug strip apparatus] having peripheral device identification, constitutes a solid color image which requires far less mental processing than required by the cited art that appears to be patterned color image (striped and ringed) devices, and therefore, provides superior visual perception, mental recognition, and mental retention of associations between each peripheral device and its corresponding housing portion." Therefore, the Applicant respectfully requests reconsideration of Dr. Mehrabian's Declaration.

4. **Present invention combination of features patentably distinct from the Applicant's own '718 Patent**

The law, under 35 U.S.C. §103, is well settled that for a cited art reference to render obvious a claimed invention, the combination of claimed elements must be taught, motivated, or suggested by the cited art. The limitations that patentably distinguish herein amended Claim 41 from the '718 Patent are as follows:

1. "power strip[:]"
2. "said housing member having a plurality of solid color-coded outlet housing portions[:]"
3. "said housing member having a corresponding plurality of solid color-coded indicia elements for identifying and for associating each outlet with one of said plurality of peripheral devices;"
4. "a kit comprising a plurality of solid color-coded indicia element sets for *retrofitting* said housing member of said power strip apparatus to a number of different ones of said plurality of peripheral devices by *correspondingly labeling* said solid-colored outlet housing portions, said plurality of electrical power cords, and said plurality of peripheral devices."

and, thus, by dependency, Claim 49 is also patentably distinct over the '718 Patent. The limitation that patentably distinguishes Claim 49 from the '718 Patent are as follows:



1. "further comprising a plurality of solid color-coded electrical power cords for connecting and corresponding the plurality of electrical outlets to the plurality of peripheral devices."

See again Appendix B for illustrations of the claimed solid color-coded power distribution system, including the claimed kit in contrast to the cited art '718 Patent power line conditioner.

Reiterating the relevant human factors considerations alluded in the May 22, 2000, Response to Final Office Action in the parent case, the present invention solid color-coded housing outlet portions or portions being retrofitted with solid colored stickers appear more prominent to the human eye than do the cited art stripes. Indeed, the '718 Patent stripes are merely self-camouflaging. In order to grasp this concept, the physiological concept of visual acuity, must be considered with respect to the claimed invention. Two classes of photoreceptors reside in the human eye, rods and cones. Rods perceive light and dark while cones perceive color. *Cones are usually concentrated in an area of the retina where the most direct beams will fall*, the area of greatest concentration being the *fovea centralis*. Ross M. Durham explains:<sup>1</sup>

The fovea centralis is directly behind the lens, positioned to be right in the middle of images that enter the eye. It is the focal point of our visual field - the center of optical precision. It's the optic zone where the highest concentration of visual receptors exists; hence, it has the finest "grain" and is the point in the eye of greatest visual acuity. Nearly all the receptors in the human fovea are cones, and there are a great many of them packed into its square millimeter. This is the part of the eye that perceives details for us.

Thus, the greatest visual acuity and the greatest visual efficacy, as human factors, are provided by the present invention use of solid colored stickers, not by the cited art camouflaged colored stripes. By so tailoring the solid colored components in the Applicant's apparatus, the user will be able to *better see and follow a pathway from a given peripheral device to its respective housing member portion*. The Applicant respectfully submits that foregoing physiological principles form the very basis of camouflage (e.g., cited art stripes, rings, etc.) principles, the antithesis of the present invention.

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<sup>1</sup>Robert M. Durham, Human Physiology - Functions of the Human Body, p. 262 (Wm. C. Brown, publishers, 1989).

In particular, Professors of Environmental Psychology, Drs. Patricia Valdez and Albert Mehrabian, explain the psychology of color perception:<sup>2</sup>

"Showiness" (assumed here to be indicative of the arousing quality of a color) correlated positively with saturation and brightness. Furthermore, "calmness" (assumed to be indicative of the nonarousing quality of a color) correlated negatively with brightness. Together, these results suggest that arousal is a positive correlate of color saturation and brightness.

The following effects of hue were evident across the 23 samples as a group: ... *grey was bad, weak, and inactive*; ... and *color was good and active*. In addition, ..., and *activity was strongly associated with color (vs. no color)*.

On point is the psychology of *patterned* images (e.g., broken by stripes) versus *solid* images (e.g., **uniform blocks of color**) which is well described by Drs. James A. Russell and Albert Mehrabian as an environmental variable in consumer research:<sup>3</sup>

Psychologists have traditionally explained a person's behavior in general - and consumer behavior in particular - as a function of two classes of variables: those variables describing differences in environments (an environment being anything that is external to the person whose behavior is being explained and that can be measured independently of that person - ...) and those variables describing differences in the persons (whatever a person brings with him to the environment and that can be measured independently of the environment).

We first turned to the studies of perception .... The variables included hue, brightness, and saturation of colors; .... We therefore turned to evidence on cross-modality in which an individual is stimulated. ... there are basic responses to all types of stimuli. ... from ... color patches to whole environments filled with ... changing physical inputs.

... But information theory ... provides a powerful concept that helps describe the arousing quality of stimuli: the **information rate of an environment**. Environments that include more novel, complex, intense, unfamiliar, improbable, changing, moving, or uncertain aspects are greater in information rate. [Emphasis added.]

As such, the Applicant has utilized human factors engineering for one feature of the present invention (i.e., the solid color-coding aspect) in order to **optimize the information rate for the average consumer** when using the present invention.

Thus, simple environments (e.g., **solid color patches** such as in the present invention), having a **lower information rate** than complex environments (e.g., **thin stripes** of the '718 Patent), are **more efficiently perceived and recognized by the user** as the mental processing

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<sup>2</sup>Patricia Valdez and Albert Mehrabian, Effects of Color on Emotion, J. of Experimental Psychology: General, V. 123, p. 396-397, Amer. Psych. Assn., Inc. (1994).

<sup>3</sup>James A. Russell and Albert Mehrabian, Environmental Variables in Consumer Research, J. of Consumer Research, V. 3, pp. 62-63 (June, 1976).

rate is inversely proportional to the information rate of the environment. Conversely, patterned images require considerably greater visual and mental processing than do solid images. The Applicant respectfully submits that the '718 Patent does not render unpatentable the present invention integral nor retrofitted solid color-coding as applied to a plug strip apparatus, intermediate cords, and peripheral devices which provides faster superior visual and mental recognition. Although the Examiner believes that motivation exists for modifying plug strips in general, *the Examiner has not shown that the '718 Patent's camouflaged stripes, particularly evidences any solution to the problem of speedy visual identification along the lines of the present invention solid color-coding.*

Reiterating, the solid-colored outlet housing portions, or portions being retrofitted by the kit, of the present invention are substantially more prominent to the human eye than the cited art stripes, as discussed supra. In further support, please see details contained in the previously submitted Declaration of Dr. Albert Mehrabian, under 37 C.F.R. §132. In addition, the very purpose of the present invention is to *not* hardwire. Thus, the present invention provides nearly unlimited flexibility in allowing the user of any type of electronic peripheral device to customize his/her electronic "hook-ups" without "hang-ups" to an AC power strip. Since the solid color-coding is applied to a plug strip rather than to a specialized electronic apparatus, the user may connect *any* peripheral device to *any* outlet with *any* interconnect that he/she so chooses. The present invention allows the user to designate (via the retrofitting option) the solid color-coding, because the interconnects and the stickers are not "hardwired." Only the present application teaches the unique set of features comprising: (a) color-coding of a power strip system using *solid* colors for each power outlet (Claims 41-48); (b) power cords in solid colors to correspond to the colors in the power strip, or, alternatively, solid color-coded indicia elements that can be attached to existing power cords supplied by manufacturers (Claims 41-48); (c) solid color-coded indicia elements for retrofitting an existing power strip (Claims 41-48) or, alternatively, solid color-coded indicia elements that can be attached to existing cords and/or equipment Claims 41-48); and (d) a plurality of outlet housing portions in conjunction with corresponding different solid colors for each outlet (Claims 41-48).

Also, outlet housing portions of the housing member are **either integrally or retrofittedly** provided with solid color for distinguishing and associating a particular peripheral device to be electrically engaged at an outlet. The housing member may also be provided with solid color-coded indicia identifying the peripheral device in the vicinity of each outlet. Thus,

while the solid colored stickers serve to identify the pathway (via any intermediate combination of cords) to a peripheral device, either a solid colored outlet housing portion of the housing member or a corresponding solid colored sticker having an integrally formed indicia identifies such peripheral device by name (e.g., via symbols, numbers, words, or acronyms) in the present invention.

In the outstanding January 16, 2003, final Office Action, the Examiner concedes that "Lee lacks the express teaching [of] a plurality of attachable color-coded labels for selectively reassigning one or more of said plurality of color-assignable areas to a corresponding number of different ones of said plurality of peripheral devices." Further, the Examiner has previously conceded in the course of long and protracted prosecution that the '718 Patent does not disclose "*stickers*," "*a set*," "*that a sticker is to be attached to a peripheral device*," "*that the colored stickers are distinct from other stickers in the set*," "*whereby said plurality of colored stickers provide an after-market means integrally provided for facilitating ascertainment of correct power distribution to said peripheral device*," and "*an electrical power strip apparatus in kit-form*." The cited '718 Patent for this ground of rejection merely describes red stripes applied to a *power line conditioner*.

The Examiner conclusorily asserts that using labels is "obvious" without pointing to any express motivation nor suggestion in the cited reference (i.e., the '718 Patent) for doing so in combination with the claimed *plug strip apparatus*:

However, ... obvious ... to use "labels" to apply to the housing member, outlets, and peripherals for the purpose of clearly identify[ing] the type of component that should be used with each outlet in accordance with the type of AC power processing associated with the outlet (col. 3, ll. 35-37).

With regard to the feature of selective reassignment of the color-assignable areas[,] because the colored indicia disclosed in Lee is assigned arbitrarily, the user is free to initially assign (reassign) system based on his/her preference. Thus, because the user has flexibility at the outset, it follows that the user would also have the ability to reassign those preferences, if he/she should at a later date desire a different choice. In essence, the configuration of the colored indicia in Lee is initially an *obvious matter of design choice*, and remains do throughout the life of the system so that at any time in the future, *the user can simply alter the placement of the colored indicia if desired*.

However, the Applicant respectfully submits that the Examiner's reasoning here is flawed, exemplifies impermissible hindsight reconstruction, and is, thus, specious: the issue with respect to obviousness is not whether the invention is easy for the consumer to use, but rather whether the consumer would have conceived of, and reduced to practice, the claimed

invention. Essentially, the very heart of all human factors inventions is to facilitate their use by the consumer. That a consumer would be able to use and understand a given human factors invention does not necessitate the conclusion that a consumer would then be able to also conceive and reduce to practice that very same human factors invention. For instance, that a consumer exists, who understands how to sit-on and adjust an ergonomic chair, does not necessitate the conclusion that this consumer would engineer the same claimed chair to provide the specific combination of ergonomics.

As such, the '718 Patent merely begs the question whether combining (a) a solid color-coding system with (b) a plug strip apparatus and (c) retrofitting labels is obvious or not. Clearly, the United States Patent Office's position with respect to the '718 Patent itself, was that combining (a) a red striped system with (b) a power line conditioner was nonobvious. The Examiner has not been able to cite any particular reference which teaches, motivates, or suggests the presently claimed system comprising: (a) a solid color-coding system; (b) a plug strip apparatus; and (c) a retrofitting labels. If the Examiner's reasoning, as stated in the outstanding final Office Action, is taken to its conclusion, no human factors invention would ever be patented in the United States. The Applicant respectfully submits that the Examiner has allowed the present invention's simplifying advantages for the consumer to prejudice her 35 U.S.C. §103(a) analysis through inadvertent impermissible hindsight reconstruction.

##### 5. Relevant case law with respect to application of 35 U.S.C. §103(a)

With respect to the case law for sustaining a rejection of the claims, under 35 U.S.C. §103(a), *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992):

Vital Signs has not offered sufficient independent evidence to support the district court's decision to combine elements from different references, arguing only that the suggestion to combine references comes from knowledge and common sense of a person of ordinary skill in the art. See, e.g., *In re Bozek*, .... That common knowledge may have been within the province of the ordinary artisan does not in and of itself make it so, absent clear and convincing evidence of such knowledge. See *C.R. Bard, Inc. v. M3 Sys., Inc.*, 157 F.3d 1340, 1352, 48 USPQ2d 1225, 1232 (Fed. Cir. 1998); *Ashland Oil, Inc. v. Delta Resins and Refractories, Inc.*, 716 F.2d 281, 297-98, 227 USPQ 657, 667 (Fed. Cir. 1985). Vital Signs, thus failed ... to establish why one of ordinary skill would have found it obvious to combine ... limitations in a particular way to achieve the ... invention.

However, the Applicant resubmits that *In re Jones* (1992), in restating the rule of *In re Fine* (1988) further defines the requisite suggestion for sustaining a §103(a) rejection:

Before the PTO may combine the disclosures of two or more prior art references in order to establish prima facie obviousness, there must be some suggestion for doing so .... *In re Fine*, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598-99 (Fed. Cir. 1988). [at 1943] [emphasis added]

... the combination ... is not an extraordinary invention; it is deceptively simple. However, simplicity alone cannot be determinative of obviousness. See *Gentry Galley, Inc. v. Berkline Corp.*, 143 F.3d 1473, 1478 [45 USPQ2d 1498] (Fed. Cir. 1998); See also *In re Oetiker*, 977 F.2d 1443, 1447 [24 USPQ2d 1443] (Fed. Cir. 1992) ("Simplicity alone is not inimical to patentability."). The standard of obviousness is not whether in hindsight, it seems elementary that someone would have combined these certain elements in the prior art to form the invention in question. .... It is insufficient to prove that at the time of the claimed invention, the separate elements of the device were present in the known art. Rather, there must have been some explicit teaching or suggestion in the art to motivate one of even ordinary skill to combine such elements so as to create the same invention. See *Arkie Lures, Inc. v. Gene Larew Tackle, Inc.*, 119 F.3d 953, 957 [43 USPQ2d 1294] (Fed. Cir. 1997).

The prior art must provide one of ordinary skill in the art the motivation to make the proposed molecular modifications needed to arrive at the claimed compound. [at 1944] [emphasis added]

In addition, *In re McLaughlin* held: "... the test for combining references is not what the individual references themselves suggest but rather what the combination of disclosures taken as a whole would suggest to one of ordinary skill in the art." *In re McLaughlin*, 170 USPQ at 212 (1971). The Court there further reversed the Board's decision, basing the reversal on a Rule 1.132 affidavit submitted by the Applicant: "The evidence, comprising two affidavits and a series of exhibits, indicates that the invention has been commercially successful and that its concept was promptly adapted by a competitor. Recognizing that the inference of obviousness drawn from the prior art disclosures is only prima facie justification for drawing the ultimate legal conclusion that the claimed invention is unpatentable under 35 U.S.C. 103, it is imperative that such secondary considerations also be evaluated in determining the final validity of that legal conclusion. .... We emphasize that such is true even where, as here, the claimed invention involves only relatively simple mechanical concepts. .... 'A patentable invention, within the ambit of 35 U.S.C. 103, may result even if the inventor *has*, in effect, merely combined features, old in the art, for their own purpose, without producing anything beyond the results inherent in their use.'" *In re McLaughlin*, 170 USPQ at 212 (1971) [Emphasis added].

Further, *In re Fritch*, 922 F.2d 1260, 23 USPQ.2d 1780 (Fed. Cir. 1992), held:

Mere fact that prior art may be modified to reflect features of claimed invention does not make modification, and hence claimed invention, obvious unless **desirability of such modification is suggested by prior art ....** [at 1780] [emphasis added]

The mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious **unless the prior art suggested the desirability of the modification.** *In re Gordon*, 733 F.2d at 902, 221 USPQ at 1127. [at 1783] [emphasis added]

More recently, *Winner International Royalty Corp. v. Wang*, No. 96-2107, 48 USPQ.2d 1139 (D.C.D.C. 1998) has reinforced the foregoing rule, that the motivating suggestion must be explicit, in holding:

... invention cannot be found obvious **unless there was some explicit teaching or suggestion in art to motivate one of even ordinary skill to combine elements so as to create same invention.** [at 1140] [emphasis added]

... there must have been some explicit teaching or suggestion in the art to motivate one of even ordinary skill to combine such elements so as to create the same invention. [at 1444] [emphasis added]

Recently, on November 2, 2000, a rejection of claims under 35 U.S.C. §103 was reversed by the U.S.P.T.O. Board of Patent Appeals and Interferences in *Ex Parte Yamamoto*, 57 USPQ2d 1382, 1384, on the ground that the *examiner's mere conjecture and speculation* (e.g., the Examiner's assertion of "common sense and common knowledge"), that one of ordinary skill in the art would have considered a prior art composition used for stabilizing higher aliphatic aldehyde compounds to also be useful for stabilizing the Applicant's claimed functional-group-containing compounds, *are insufficient for making an obviousness rejection.*

The appealed invention of *Ex Parte Yamamoto* involves a method for stabilizing a *long-chain unsaturated aliphatic* ester, alcohol, ketone, or hydrocarbon, having at least ten carbon atoms and at least one double bond, by admixing with stabilizers *2'-(2'-hydroxy-5'methylphenyl)benzotriazole* and a *phenolic compound* at 0.1 - 10 wt. % of the long-chain unsaturated aliphatic compound. The Examiner's cited reference, Ishihara et al. (U.S. Patent No. 4,568,771), disclosed a method for stabilizing an *aliphatic higher aldehyde compound* (i.e., a *pheromone*) by admixing with a stabilizer selected from a group consisting of *salicylic acid compounds, benzotriazole compounds* (e.g., *2'-(2'-hydroxy-5'methylphenyl)benzotriazole*), and other compounds (e.g., *di-tert-butyl-p-cresol*) at 0.01 - 10 wt. % of the aldehyde compound. In reversing the rejection, the Board reasoned that the cited art method for stabilizing a *pheromone*, which happens to be an *aldehyde*, does not teach, motivate, nor suggest the claimed method for

stabilizing a long-chain unsaturated aliphatic compound (e.g., an ester, a alcohol, a ketone, or a hydrocarbon having at least ten carbon atoms and at least one double bond) using a similar stabilizer composition (i.e., 2'-(2'-hydroxy-5'-methylphenyl)benzotriazole in conjunction with di-tert-butyl-p-cresol). The Board's decision in *Ex Parte Yamamoto* reaffirmed the general rule that an obviousness rejection must be based in fact (i.e., evidence or explanation regarding any teaching, suggestion, or motivation in or among the cited art), not in the examiner's mere conjecture or speculation that "one of ordinary skill would have found the claimed invention obvious to try."

Even more recently, *In re Zurko*, 59 USPQ2d 1697, 1698 (CAFC), decided on August 2, 2001, prior to the final Office Action dated August 29, 2001, in reversing the Board's decision, held:

Finally, the deficiencies of the cited references cannot be remedied by the Board's general conclusions about what is "basic knowledge" or "common sense" to one of ordinary skill in the art. ... the Board contended that "it is basic knowledge that communication in trusted environments is performed over trusted paths" and ... verifying the trusted command ... is "nothing more than good common sense." .... We cannot accept these findings by the Board. This assessment of basic knowledge and common sense was not based on any evidence in the record and, therefore, lacks substantial evidence support. .... Rather, the Board must point to some *concrete evidence* in the record in support of these findings.<sup>2</sup> To hold otherwise would render the process of appellate review for substantial evidence on the record a meaningless exercise. .... Accordingly, we cannot accept the Board's unsupported assessment of the prior art. [Emphasis added.]

Thus, the Examiner cannot simply reach conclusions based on her own understanding or experience nor on her assessment, speculation, or conjecture as to what would be "basic knowledge" or "common sense."

#### 6. Relevant case law applied to the evidence.

The Applicant respectfully submits that the Examiner has not sustained her burden of establishing a prima facie case of obviousness. On point with respect to the nature of the Examiner's rejections, is the case of *In re Gartside and Norton*, recently decided February 15, 2000, where the CAFC applied the well-established rules of *Dembiczak* (50 USPQ2d at 1616), *Graham* (148 USPQ at 467), *Pro-Mold* (37 USPQ2d 1626), and *Rouffet* (47 USPQ2d at 1456): "the ultimate determination ... whether an invention is or is not obvious is a legal conclusion based on underlying factual inquiries including (1) the scope and content of the prior art; (2) the



level of ordinary skill in the prior art; (3) the differences between the claimed invention and the prior art; and (4) objective evidence of nonobviousness. ... the best defense against the subtle but powerful attraction of a hindsight-based obviousness analysis is *rigorous application of the requirement for a showing of the teaching or motivation to combine prior art references*. ... suggestion may come from ... the teachings of the references themselves, and ... from the nature of the problem to be solved." Evidence of suggestion may be a "trend in the art" towards solving the problem by one of ordinary skill in the proposed manner.

More particularly, *Dembiczak*, in Section II of that opinion, states, "Measuring a claimed invention against the standard established by section 103 requires the oft-difficult but critical step of casting the mind back to the time of the invention, to consider the thinking of one of ordinary skill in the art, guided only by the prior art references and the then-accepted wisdom of the field. .... Close adherence to this methodology is especially important ... where the very ease with which the invention can be understood may prompt one 'to fall victim to the insidious effect of a hindsight syndrome wherein that which only the inventor taught is used against its teacher.' ... 'must specifically identify the reasons one of ordinary skill in the art would have been motivated to select the references and combine them' ... 'objective teaching [leading to the combination]' ... conclusion of obviousness was error 'when it did not elucidate any factual teachings, suggestions or incentives from this prior art that showed the propriety of combination' .... Combining prior art references without evidence of such a suggestion, teaching, or motivation simply takes the inventor's disclosure as a blueprint for piecing together the prior art to defeat patentability — the essence of hindsight. ... the showing [of actual evidence] must be clear and particular. ... 'examiner's [mere] conclusory statement ... unaccompanied by evidence or reasoning ... is entirely inadequate to support the rejection.'"

Even more specifically on point are the rules of *In re Piasecki* (223 USPQ 785, 787-788) and *In re Lalu* (223 USPQ 1257, 1258) reiterated by *In re Fine* (5 USPQ2d at 1598), decided January 28, 1988, which states, "Fine says the PTO has not established a *prima facie* case of obviousness. ... the references applied by the ... Examiner were improperly combined, using hindsight reconstruction, without evidence to support the combination .... He argues that ... the claims were rejected because the PTO thought it would have been 'obvious to try' the claimed invention, an unacceptable basis for rejection. We agree. The PTO has the burden ... to establish a *prima facie* case of obviousness. .... It can satisfy this burden only by a

showing some objective teaching in the prior art or that the knowledge generally available to one of ordinary skill in the art would lead that individual to combine the relevant teachings of the references.”

Although the Examiner has distilled the issues in the outstanding final Office Action by citing only the ‘718 Patent as the ground for rejection for the claims under §103(a), the Examiner has not shown that the ‘718 Patent *expressly* suggests or motivates the claimed invention. Since the Examiner herself has previously conceded, during examination, that the “*reasons*” for color-coding between the present invention and the cited art are distinct, the Applicant respectfully submits that *neither suggestion nor motivation can then be reasonably inferred* from the ‘718 Patent which is not newly cited. Even if the concept of color-coding, in general, has been known, the concept has never been applied to a *plug strip apparatus in combination with a retrofitting kit* until the present invention. The Examiner has yet to present any evidence that “a person of ordinary skill in the art,” the relevant art here being in the area of *plug strips*, would have thought to combine (1) a *plug strip* apparatus, (2) a solid color-coding system, and (3) a retrofitting kit.

Further, the Examiner’s very own previously cited case law, *In re McLaughlin*, held that ‘A patentable invention, within the ambit of 35 U.S.C. 103, *may* result even if the inventor *has*, in effect, merely combined features, old in the art, for their own purpose, without producing anything beyond the results inherent in their use.” As such, even if the combination of the instant claimed elements only produced results “inherent in their use” (i.e., “expected beneficial results”), as asserted by the Examiner, the Applicant respectfully submits that this circumstance would not and does not preclude patentability under the law as stated in *McLaughlin*. By using the Applicant’s own teachings to “piece-together” the ‘718 Patent teachings with the Examiner’s own speculation, the Examiner has inadvertently engaged in the practice of basing her rejection on the prohibited “obvious to try” assertion.

#### C. Conclusion with respect to Issue IV

Thus, the ‘718 Patent does not teach, suggest, nor motivate herein amended independent Claims 41, 43, 45, and 47, respectively reciting:

41. (Amended) A solid color-coded AC electrical power distribution system, said system comprising:  
a housing member having a plurality of electrical outlets for connecting electrical power to a plurality of peripheral devices,  
said housing member having a plurality of color-assignable areas,  
each area of said color-assignable areas on said housing member having a corresponding plurality of color-coded indicia for identifying and for associating each outlet with one of said plurality of peripheral devices;  
and  
a plurality of attachable color-coded labels for selectively and correspondingly reassigning one or more of said plurality of color-assignable areas to a corresponding number of different ones of said plurality of peripheral devices.
43. (Amended) A solid color-coded AC electrical power distribution system, said system comprising:  
a housing member having a plurality of electrical outlets for connecting electrical power to a plurality of peripheral devices,  
said housing member having a plurality of color-assignable areas,  
each outlet of said plurality of electrical outlets having a corresponding color-assignable area, and  
each area of said color-assignable areas on said housing member having a corresponding plurality of color-coded indicia for identifying and for associating each outlet with one of said plurality of peripheral devices;  
and  
a plurality of attachable color-coded labels for selectively and correspondingly reassigning one or more of said plurality of color-assignable areas on said housing member to a corresponding number of different ones of said plurality of peripheral devices.
45. (Amended) A solid color-coded AC electrical power distribution system, said system comprising:  
a housing member having a plurality of electrical outlets for connecting electrical power to a plurality of peripheral devices,  
said housing member having a plurality of color-assignable areas,  
each outlet of said plurality of electrical outlets having a corresponding color-assignable area,  
each device of said plurality of peripheral devices having a corresponding color-assignable area, and  
each area of said color-assignable areas on said housing member having a corresponding plurality of color-coded indicia for identifying and for associating each outlet with one of said plurality of peripheral devices;  
and  
a plurality of attachable color-coded labels for selectively and correspondingly reassigning one or more of said color-assignable areas on one or more of said plurality of electrical outlets to a corresponding number of different ones of said plurality of peripheral devices.
47. (Amended) A solid color-coded AC electrical power distribution system, said system comprising:  
a housing member having a plurality of electrical outlets for connecting electrical power to a plurality of peripheral devices,  
said housing member having color-assignable areas,  
each outlet of said plurality of electrical outlets having a corresponding color-assignable area,  
each device of said plurality of peripheral devices having a corresponding color-assignable area, and  
each area of said color-assignable areas on said housing member having a

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corresponding plurality of color-coded indicia for identifying and for associating each outlet with one of said plurality of peripheral devices;  
and  
a plurality of attachable color-coded labels for selectively and correspondingly reassigning one or more of said color-assignable areas on one or more of said plurality of peripheral devices to a corresponding number of different ones of said plurality of electrical outlets.

Subsequently, the '718 Patent does not teach, suggest, nor motivate herein amended dependent Claims 42, 44, 46, and 48. Therefore, the Applicant respectfully requests that the Examiner's grounds for rejection on this basis be withdrawn.

**The Claims Do Not Stand Nor Fall Together:**

The Applicant respectfully submits that the claims either stand or fall individually. With regard to independent Claims 41, 43, 45, and 47, Claims 42, 44, 46, and 48 are respectively dependent therefrom and differ in cumulative language as follows:

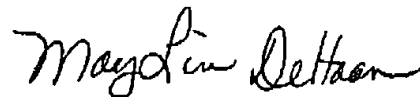
- 42. wherein said plurality of attachable color-coded labels further include indicia for identifying which of said plurality of peripheral devices has been assigned a new color.
- 44. wherein said plurality of attachable color-coded labels further include indicia for identifying which of said plurality of peripheral devices has been assigned a new color.
- 46. wherein said plurality of attachable color-coded labels further include indicia for identifying which of said plurality of peripheral devices has been assigned a new color.
- 48. wherein said plurality of attachable color-coded labels further include indicia for identifying which of said plurality of peripheral devices has been assigned a new color.

Thus, the Applicant likewise respectfully submits that inventive features may be individually characterized; and that, therefore, the foregoing claims should not stand nor fall together. Only a truly anticipatory or expressly suggestive reference, in every sense, would be able to render all of the foregoing claims unpatentable.

**CONCLUSION**

Accordingly, Claims 41-48 have been herein amended to better encompass the full scope and breadth of the present invention, notwithstanding the Applicant's belief that the claims would have been allowable as originally filed. Therefore, reconsideration of the present application in light of the foregoing arguments is respectfully requested. Pending Claims 41-48 are believed to be fully supported by the specification, and are believed to be in allowable form, or alternatively, placed in better condition for Reinstatement of the Appeal. In view of the foregoing arguments, the Applicant respectfully requests that the objection and rejections of the pending claims be withdrawn. *The Examiner is further cordially invited to telephone the undersigned for any reason which would advance the pending claims to allowance.*

Respectfully submitted,



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**APPENDIX A**  
**(37 C.F.R. §1.192(c)(9))**

**Claims:**

41. (Amended) A solid color-coded AC electrical power distribution system, said system comprising:  
a housing member having a plurality of electrical outlets for connecting electrical power to a plurality of peripheral devices,  
5 said housing member having a plurality of color-assignable areas,  
each area of said color-assignable areas on said housing member having a corresponding plurality of color-coded indicia for identifying and for associating each outlet with one of said plurality of peripheral devices;  
and  
10 a plurality of attachable color-coded labels for selectively and correspondingly reassigning one or more of said plurality of color-assignable areas to a corresponding number of different ones of said plurality of peripheral devices.
42. (Amended) A system, as recited in Claim 41, wherein said plurality of attachable color-coded labels further include indicia for identifying which of said plurality of peripheral devices has been assigned a new color.
43. (Amended) A solid color-coded AC electrical power distribution system, said system comprising:  
a housing member having a plurality of electrical outlets for connecting electrical power to a plurality of peripheral devices,  
5 said housing member having a plurality of color-assignable areas,  
each outlet of said plurality of electrical outlets having a corresponding color-assignable area, and  
each area of said color-assignable areas on said housing member having a corresponding plurality of color-coded indicia for identifying and for

10 associating each outlet with one of said plurality of peripheral devices;  
and  
a plurality of attachable color-coded labels for selectively and correspondingly  
reassigning one or more of said plurality of color-assignable areas on said housing  
member to a corresponding number of different ones of said plurality of  
15 peripheral devices.

44. (Amended) A system, as recited in Claim 43, wherein said plurality of attachable color-coded labels further include indicia for identifying which of said plurality of peripheral devices has been assigned a new color.

45. (Amended) A solid color-coded AC electrical power distribution system, said system comprising:

a housing member having a plurality of electrical outlets for connecting electrical power  
to a plurality of peripheral devices,  
5 said housing member having a plurality of color-assignable areas,  
each outlet of said plurality of electrical outlets having a corresponding color-assignable area,  
each device of said plurality of peripheral devices having a corresponding color-assignable area, and  
10 each area of said color-assignable areas on said housing member having a corresponding plurality of color-coded indicia for identifying and for associating each outlet with one of said plurality of peripheral devices;  
and  
a plurality of attachable color-coded labels for selectively and correspondingly  
15 reassigning one or more of said color-assignable areas on one or more of said plurality of electrical outlets to a corresponding number of different ones of said plurality of peripheral devices.

46. (Amended) A system, as recited in Claim 45, wherein said plurality of attachable color-coded labels further include indicia for identifying which of said plurality of peripheral devices has been assigned a new color.
47. (Amended) A solid color-coded AC electrical power distribution system, said system comprising:  
a housing member having a plurality of electrical outlets for connecting electrical power  
to a plurality of peripheral devices,  
5 said housing member having color-assignable areas,  
each outlet of said plurality of electrical outlets having a corresponding color-assignable area,  
each device of said plurality of peripheral devices having a corresponding color-assignable area, and  
10 each area of said color-assignable areas on said housing member having a corresponding plurality of color-coded indicia for identifying and for associating each outlet with one of said plurality of peripheral devices;  
and  
a plurality of attachable color-coded labels for selectively and correspondingly  
15 reassigning one or more of said color-assignable areas on one or more of said plurality of peripheral devices to a corresponding number of different ones of said plurality of electrical outlets.
48. (Amended) A system, as recited in Claim 47, wherein said plurality of attachable color-coded labels further include indicia for identifying which of said plurality of peripheral devices has been assigned a new color.

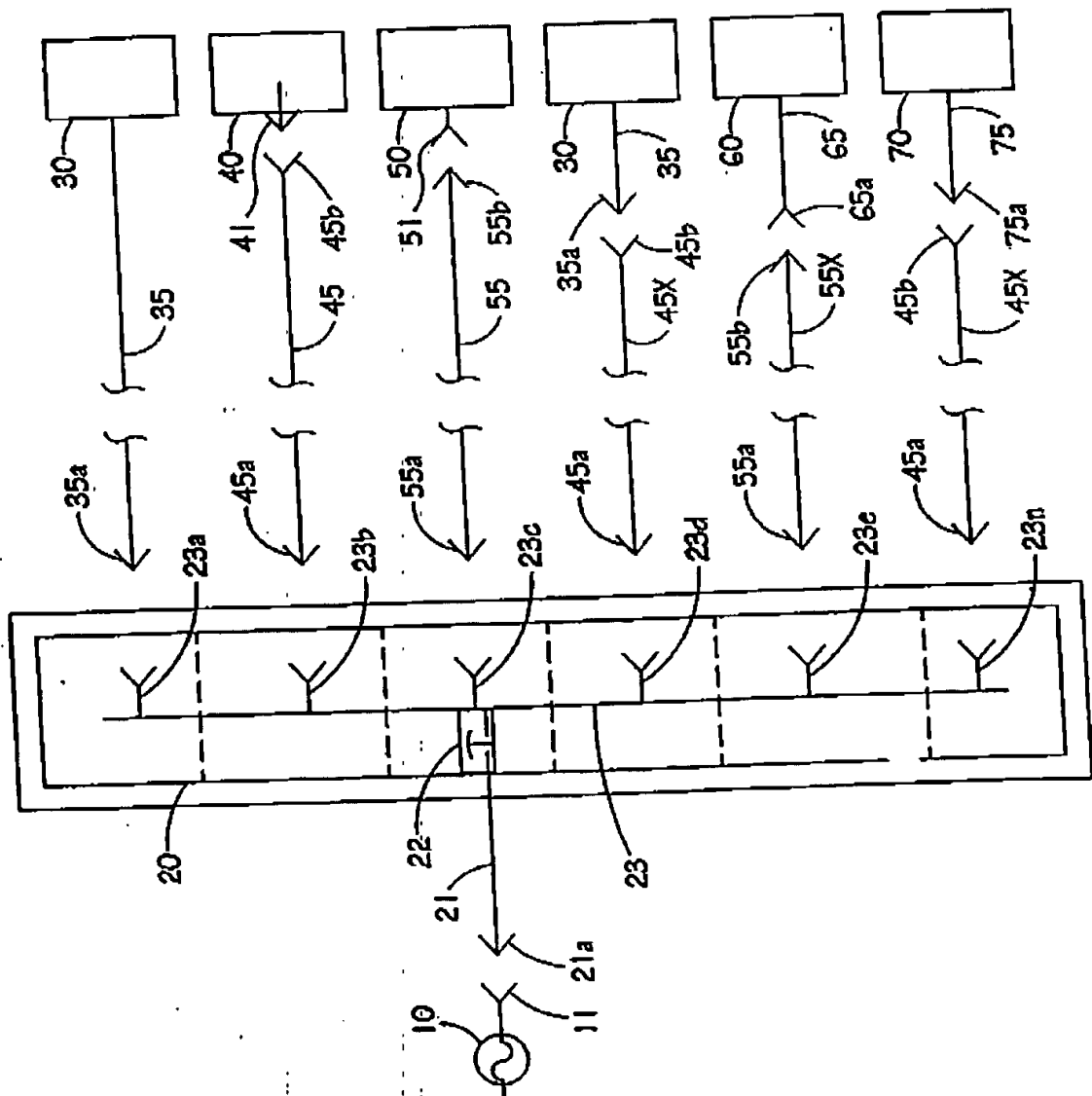


**APPENDIX B: COMPARATIVE DRAWINGS**  
**(37 C.F.R. §1.192(c)(6))**

1. **Present Invention (3 pages)**
2. **'718 Patent to Lee (1 page)**

1/3

Figure 1  
(Prior Art)



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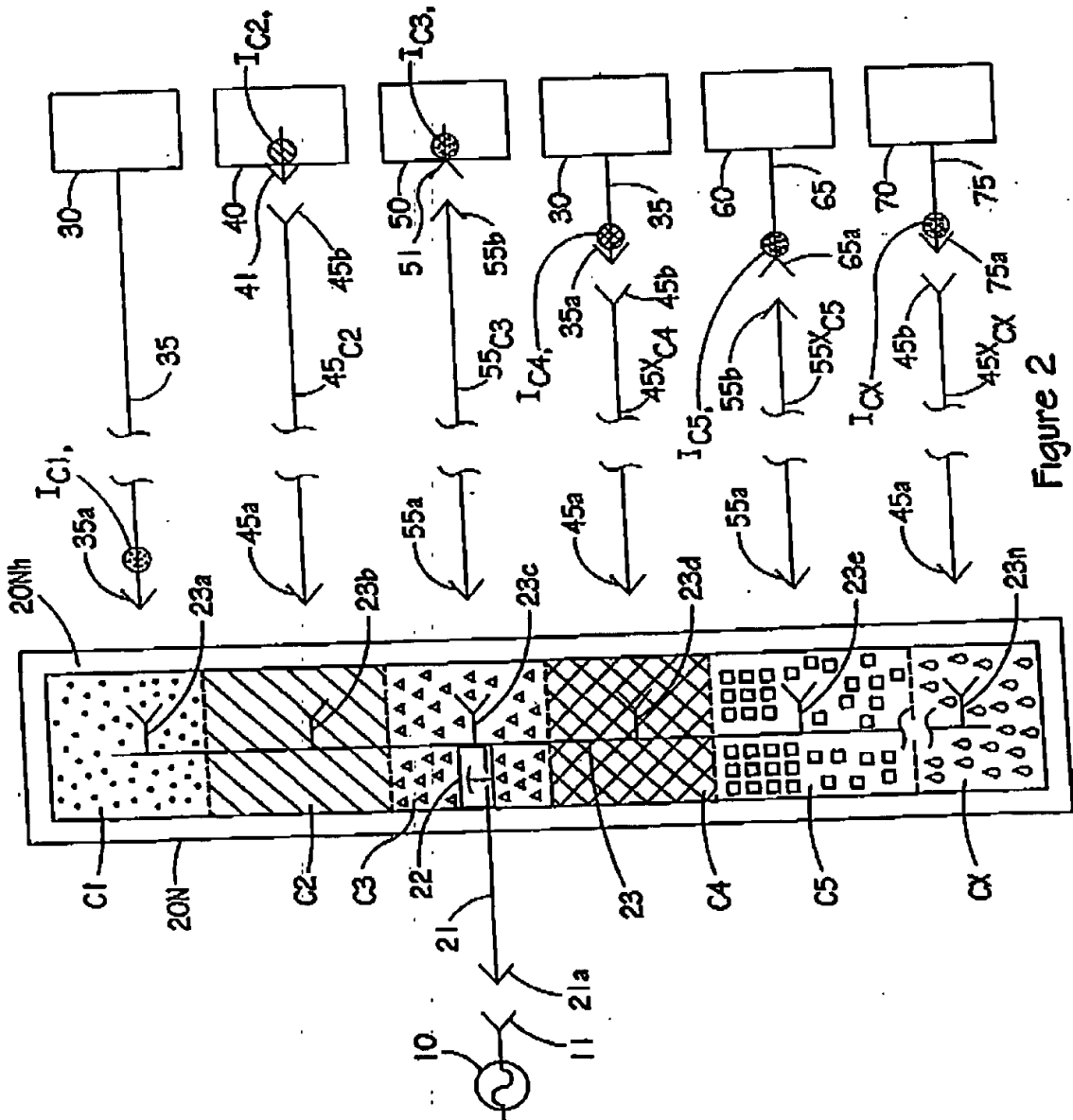


Figure 2

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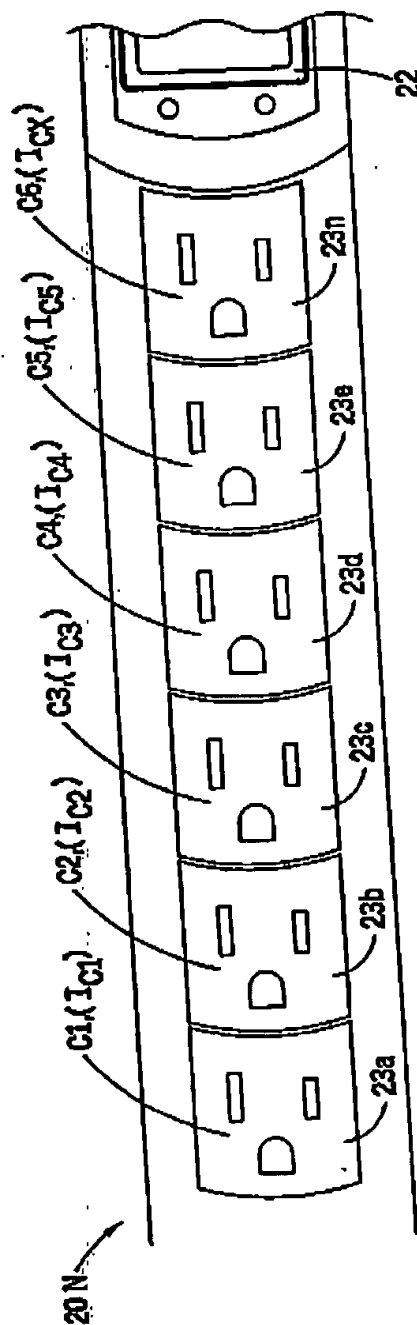


Figure 3

US005589718A

**United States Patent** (19)  
**Lee**

(11) **Patent Number:** 5,589,718  
 (45) **Date of Patent:** Dec. 31, 1996

[54] **POWER LINE CONDITIONER**

[75] **Investor:** Noel Lee, Daly City, Calif.

[73] **Assignee:** Monster Cable International, Ltd.,  
 Hamilton, Bermuda

[21] **Appl. No.:** 422,442

[22] **Filed:** Apr. 14, 1995

[51] **Int. Cl.<sup>6</sup>** H02J 1/00

[52] **U.S. Cl.** 307/72; 307/85; 307/86;  
 307/87; 307/18; 307/29; 307/38; 307/39;  
 439/92; 439/105; 439/620; 439/535

[58] **Field of Search** 307/85, 86, 87;  
 307/18, 29, 38, 39; 439/92, 105, 620, 535

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*Assistant Examiner*—Kim Lockett  
*Attorney, Agent, or Firm*—Haynes and Boone, L.L.P.

[57] **ABSTRACT**

A power line conditioner in which a plurality of outlets are mounted on a housing for receiving AC plugs from a plurality of electrical components. The housing is connected to a source of AC power which is distributed to each of the outlets, with the AC power associated with the outlets being processed to improve the performance of the components connected to the outlets. The AC power processing at one or more of the outlets differs from the processing at one or more of the other outlets so that the outlets can accommodate components with different electrical characteristics.

**3 Claims, 1 Drawing Sheet**

